

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ROBERT ELMORE, ET AL.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:16-cv-00296-HSO-JCG

**ACRE BEYOND THE RYE, LLC,
ET AL.**

DEFENDANTS

PLAINTIFFS' MOTION TO CONSOLIDATE CASES

Plaintiffs, by and through counsel and pursuant to *Fed. R. Civ. Proc.* 42, Uniform Local Rule 42, and related authority, hereby files this Motion to Consolidate Cases. In support of the Motion, Plaintiffs would show unto the Court as follows:

1. There are now two actions pending in the United States District Court for the Southern District of Mississippi, Northern Division asserting similar claims arising from the funding, filming, and production of the movie *Acre Beyond the Rye* by Acre Beyond the Rye, LLC and others.

2. Those two pending actions, in the order of their filing, are:

- a. *Elmore, et al. v. Acre Beyond the Rye, LLC, et al.*, Civil Action No. 3:16-cv-0296. District Judge Ozerden and Magistrate Judge Gargiulo. This action was filed on April #, 2016.
- b. *Elmore, et al. v. Lyle Howry, et al.*, Civil Action No. 3:17-cv-0173. District Judge Lee and Magistrate Judge Anderson were assigned to preside over this action, which was filed on March 14, 2017.

3. The two cases are still in the discovery phase of litigation.

4. *Federal Rule of Civil Procedure* 42(a) provides that “[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all

matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.”

5. *Uniform Local Rule 42* states:

In civil actions consolidated under FED.R.CIV. P. 42(a), the action bearing the lower or lowest docket number will control the designation of the district or magistrate judge before whom the motion to consolidate is noticed; the docket number will also determine the judge before whom the case or cases will be tried. Consolidation of actions from different divisions of a district court will be controlled by the earliest filing date. A dismissal of the action bearing the lower or lowest number before the hearing on a motion to consolidate will not affect the operation of this rule. The judge initially assigned the lower or lowest numbered action, even if that action has been dismissed, will be the judge before whom the action(s) will be tried.

6. The two actions at issue here share common issues of both law and fact. A review of the Complaints in each action demonstrates the commonality of both factual and legal issues.

7. Since there are common legal and factual issues, consolidation is permitted under Rule 42. Consolidation of these actions is also especially favored under precedent, because consolidating the matters will promote judicial economy and avoid unnecessary duplication of efforts and the resultant costs. Consolidation will also avoid the prospect of competing rulings on discovery matters and other common legal issues that will arise during the course of litigation.

8. The two actions are due to be consolidated with the earliest-filed action, which is *Elmore, et al. v. Acre Beyond the Rye, LLC, et al.*, Civil Action No. 3:16-cv-0296. Thus, both actions should be consolidated, with District Judge Ozerden and Magistrate Judge Gargiulo presiding.

9. Counsel for Plaintiffs have conferred with counsel for the Defendants in both actions (defense counsel is the same for each case), who indicated that they consented to consolidation of these two actions.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon filing this Motion will be referred to Magistrate Judge Gargiulo for consideration under Local Rule 42 and, thereafter, that the Motion be granted and the two actions enumerated above be consolidated pursuant to *Fed. R. Civ. Proc.* 42.

RESPECTFULLY SUBMITTED, this the 2nd day of October, 2017.

/s/ Graham P. Carner
GRAHAM P. CARNER

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CERTIFICATE OF SERVICE

I, Graham P. Carner, do hereby certify that I served a true and correct copy of the above and foregoing document by electronically filing same in accordance with this Court's electronic filing procedures, resulting in notice to ALL COUNSEL OF RECORD.

So certified this the 2ND day of October, 2017.

/s/ Graham P. Carner
GRAHAM P. CARNER